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December 8, 2003

Via Federal Express and E-Mail Delivery

Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Re: MBI Administration With Respect to Named Rural Wireless Carriers

To Whom It May Concern:

Purpose of this Correspondence

This law firm acts as general outside counsel to MBI Oversight LLC, a Delaware limited liability company ("MBI LLC"). In that capacity, this law firm has been involved in discussions with Michael Kurtis, a principal in the law firm of Kurtis & Associates, P.C. ("K&A"), who acts as special counsel to Minnesota Southern Wireless Company, d/b/a HickoryTech ("HickoryTech"), with respect to certain matters before the Commission, including with respect to an ex parte presentation by K&A, on May 23, 2002, regarding MBI administration as part of CC Docket No. 95-116, Telephone Number Portability (the "May 2002 Ex Parte Presentation"). The purpose of this correspondence is to advise you, in my capacity as general outside counsel to MBI LLC, on the status of those discussions with K&A.

Continuing Discussions without Final Resolution

Both the members of MBI LLC and this law firm have been engaged in discussions with K&A since June 2002, in an attempt both to understand and to resolve the objections expressed by K&A on behalf of HickoryTech (and allegedly other rural wireless carriers) to execution of the uniform form of MBI/AAS User Agreement and participation in MBI administration pursuant to the MIN Block Identifier Assignment Guidelines and Procedures ("MBI Guidelines"). Unfortunately, after much discussion and the circulation of documents attempting to resolve the objections, MBI LLC has been unable to reach agreement with K&A, for the reasons summarized in this letter.

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The Basis of MBI LLC's Inability to Acquiesce to K&A Requests

As you know, MBI LLC, as a coordinating contracting entity has entered into a contract with NCS Pearson ("Pearson") as the neutral, third-party contractor to implement a uniform solution to MBI administration, referred to as the MBI Assignment and Administration System (the "MBI/AAS"). That solution is represented legally by a Master Services Agreement (the "MSA") between MBI LLC and Pearson and individual MBI/AAS User Agreements between Pearson and individual carriers (the "MBI/AAS User Agreement").

In an effort to ensure uniform, non-discriminatory access to and availability of the MBI/AAS, MBI LLC has adopted the model recommended by the FCC with respect to local number portability in the Commission's Second Report and Order, FCC 97-289, paragraph 95, and which is currently in operation. That model adopts use of a standard uniform user agreement between the contractor and the particular carrier, which is promulgated in accordance with a master contract between the contractor and the LLC. Such a model is intended to ensure that utilizing entities obtain service under the exact same terms and conditions.

K&A, on behalf of HickoryTech, has objected to signing the standard form MBI/AAS User Agreement, and has requested specific revisions and changes to the standard form that have not and are not being offered to other utilizing entities. In addition, K&A, on behalf of HickoryTech, has requested changes to the MBI Guidelines, which are administered and subject to revision and adoption only by the MBI Oversight Counsel (the "MOC") and not by the MBI LLC.

In fact, the operating agreement that governs the operation of the MBI LLC explicitly recognizes the authority of the MOC, not the LLC, to adopt and to revise the MBI Guidelines. The MOC is an open industry forum, where participation and membership is open to any licensed United States facilities-based wireless carrier, and where one participating carrier is entitled to one vote, without regard to market share or carrier size.

The MBI LLC takes seriously both its charter to ensure equal, identical and non-discriminatory access to and availability of the MBI/AAS and its obligation not to authorize the alteration of the terms of the MBI/AAS User Agreement on an ad hoc basis for those individual carriers that might attempt to negotiate or insist upon changes. Accordingly, the

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MBI LLC has been unable to negotiate acceptable, uniform revisions to the MBI/AAS User Agreement with K&A, because the members of the MBI LLC consider the revisions suggested by K&A to constitute special accommodations to the unique needs of HickoryTech and other K&A clients, thereby compromising the non-discriminatory nature of the MBI/AAS User Agreement.

The MBI LLC also takes seriously its belief that MBI administration is necessary to support nationwide roaming and to deliver valid call back numbers to Public Safety Answering Points. Accordingly, the MBI LLC has been unwilling to materially deviate from the MSA.

Examples of MBI LLC Attempts to Address K&A's Objections

Nonetheless, the MBI LLC has attempted in other ways to address the objections raised by K&A. Those efforts have included inviting K&A to attend meetings of the MBI LLC to explain the objections and to explore alternative solutions to revising the MBI/AAS User Agreement and requesting that the MOC consider revisions to the Guidelines proposed by K&A. As counsel to MBI LLC, I have circulated and reviewed numerous proposals and draft resolutions.

In fact, soon after the MBI LLC began discussions with K&A upon learning of some of the issues raised by K&A in the May 2002 Ex Parte Presentation, the MBI LLC agreed to an extension of the grandfathering period and entered into an Agreement to Grandfather MBIs with HickoryTech. Such an agreement was considered by the MBI LLC to constitute an acceptable resolution of some of the issues raised, because it did not constitute a non-uniform and discriminatory change in the MBI/AAS User Agreement or the MSA. The agreement also reflects the good faith and willingness of the MBI LLC to listen to and attempt to accommodate the justifiable concerns of all carriers within the framework of the existing MBI/AAS User Agreement and the MSA.

Unfortunately, following the Agreement to Grandfather MBIs, it became apparent during our discussions, that K&A objections included deeper concerns over the ability of the MOC to change the MBI Guidelines (even if K&A's clients did not unanimously consent to those changes) and over the ability of the MBI LLC to agree to changes in the MSA which could, theoretically, not be agreeable to all of K&A's clients. When it became apparent that the MBI LLC could not agree to K&A's efforts to, in effect, circumscribe and restrict the MBI LLC's right to exercise its reasonable discretion in administering the

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MBI/AAS under the MSA, I even proposed alternative formulations of draft language, instead, that were intended to reiterate and make clear that even if K&A's clients executed the standard, form MBI/AAS User Agreement, like all other prospective Users (and existing Users), they would preserve whatever pre-existing rights and remedies they already had both (1) to "opt-out" of the MBI/AAS User Agreement, if they decided that their interests were no longer being served, and (2) to seek redress before the MOC, the FCC or other regulatory forums, if they objected in the future to changes in the MSA. Although it was and always has been my view that these rights have been specifically recognized and preserved in the MSA and the operating agreement for the MBI LLC, these formulations were intended simply to reiterate this interpretation (and not to change anything), so that they would, therefore, automatically apply to all current Users and prospective Users, alike, and not just to K&A's clients. These formulations, too, were rejected by K&A.

In addition, during these discussions with K&A, in an effort to permit the parties to consider and communicate responses to the various proposals without risking any inadvertent potential damage to the interests of any objecting party, the MBI LLC even agreed to a temporary suspension of the potential assignment of two MBI's on the request of K&A. This was viewed by MBI LLC as a prudent and responsible exercise of discretion in overseeing the MBI administration process under the terms and provisions of the MSA.

Unfortunately, those efforts were unsuccessful. Nonetheless, the MBI LLC has agreed to a continued temporary suspension of the potential assignment of these two MBI's until December 31, 2003. At that time, if all matters have not been satisfactorily resolved with K&A, the MBI LLC will again consider these MBIs. Again, this reflects the good faith and willingness of the MBI LLC to listen to and attempt to accommodate the justifiable concerns of all carriers, but within the framework of the existing MBI/AAS User Agreement and the MSA.

Temporary Alternative Administrator Proposal

When it became apparent that there likely was no way to address the objections of K&A without making changes to the MBI/AAS User Agreement that the MBI LLC thought would render the MBI/AAS User Agreement non-uniform and would raise the specter of potentially discriminatory and non-uniform access to the MBI/AAS, the MBI LLC agreed to consider an arrangement under which K&A would act as an alternative MBI

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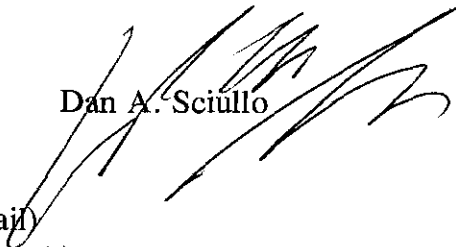
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administrator if certain agreements regarding procedures and interface with the Contractor under the MSA could be obtained. While the MBI LLC believes that it will be difficult to reach agreements with K&A that would not adversely impact the MBI/AAS and MBI administration, generally, the MBI LLC has nonetheless requested that the Contractor under the MSA explore ways to enable K&A to act as an alternative MBI administrator for certain of its clients in a manner that will be acceptable and workable for all concerned. If an acceptable approach can be developed, the MBI LLC has committed to give it consideration, so long as the implementation of the proposed approach does not adversely impact the MBI/AAS and MBI administration or compromise the MBI LLC's insistence upon both ensuring uniform and non-discriminatory access to and availability of the MBI administration process and advancing the related regulatory mandates, including support for nationwide roaming and delivery of valid call back numbers to Public Safety Answering Points.

Accordingly, the MBI LLC will continue to keep the FCC apprised of its efforts and will continue in good faith to continue those efforts to develop an acceptable approach to allow K&A to act as an alternative MBI administrator for certain of its clients, without adversely impacting the MBI/AAS and MBI administration.

Very truly yours,

BERENBAUM, WEINSHIENK & EASON, P.C.


Dan A. Sciullo

DAS/sh

cc: Patrick Forster (by e-mail)
Jennifer Salhouse (by e-mail)
Barry Ohlson (by e-mail)
Jared Carlson (by e-mail)